

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AROR ARK O'DIAH,

Plaintiff,

DECISION AND ORDER

10-CV-6705L

v.

D. ARTUS, et al.,

Defendants.

Plaintiff, Aror Ark O'Diah, has filed a "motion for modification" (Dkt. #22) of this Court's Decision and Order entered August 24, 2012 (Dkt. #20) granting defendants' motion to dismiss (Dkt. #11) and dismissing the complaint. The Court treats plaintiff's motion as a motion to alter or amend a judgment under Fed. R. Civ. P. 59.

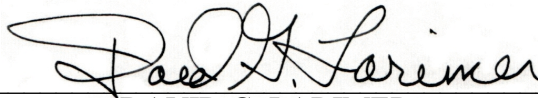
In his current motion, plaintiff contends that from May 2010 to January 2011, he was confined to SHU for over 200 days, as a result of multiple sentences arising from several misbehavior reports. There is some authority from within this Circuit that under some circumstances, it may be appropriate to aggregate separate periods of confinement if they constituted "a sustained period of confinement." See *Giano v. Selsky*, 238 F.3d 223, 226 (2d Cir. 2001); *Hollman v. Lindsay*, No. 08-CV-1417, 2009 WL 3112076, at *12 n.7 (E.D.N.Y. Sept. 25, 2009).

Accordingly, the Court directs defendants to respond to plaintiff's Rule 59 motion, as set forth in the Conclusion of this Order. Defendants' response should particularly address the issue concerning the cumulative length of plaintiff's SHU sentences as that relates to his procedural due process claims.

CONCLUSION

Defendants are directed to respond to plaintiff's motion to alter or amend a judgment (Dkt. #22), no later than October 9, 2012.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 5, 2012.